

AMENDED IN SENATE JANUARY 12, 2004

SENATE BILL

No. 904

Introduced by Senator Chesbro

February 21, 2003

An act to amend Sections ~~5093.55 and 5093.56~~ 5093.52, 5093.55, 5093.56, 5093.61, and 5093.68 of the Public Resources Code, relating to wild and scenic rivers.

LEGISLATIVE COUNSEL'S DIGEST

SB 904, as amended, Chesbro. Wild and scenic rivers.

~~Under~~

(1) *Under* existing law, the California Wild and Scenic Rivers Act, specified rivers and segments thereof are included within the California Wild and Scenic Rivers System and are subject to certain protections. The act requires the Secretary of the Resources Agency to study and submit to the Governor and the Legislature reports on the suitability or nonsuitability of designated potential additions to the system.

This bill would delete obsolete provisions.

(2) *The California and Wild Scenic Rivers Act defines "special treatment areas" as specific locations that are within 200 feet of the watercourse transition line of federal or state designated wild and scenic rivers, that may be at risk during timber operations. The act imposes certain requirements related to timber operations within the boundaries of special treatment areas. Certain violations of those requirements are a crime.*

This bill would change the definition of "special treatment areas" to also include specific locations that are within 200 feet of the watercourse transition line of state-designated recreational rivers, that may be at risk during timber operations. The bill would specify that the

requirements related to timber operations within special treatment areas apply to areas adjacent to wild, scenic, and recreational river segments. Because the bill would expand the definition of “special treatment areas,” and a violation of certain requirements related to those areas is a crime, the bill would impose a state-mandated local program, by creating a new crime.

(3) The California and Wild Scenic Rivers Act requires all departments and agencies of the state to exercise their powers granted under any other provision of law in a manner consistent with the policy and provisions of the act.

This bill, instead, would require all departments and agencies of the state to exercise their powers granted under any other provision of law in a manner that protects and enhances the free-flowing state of each component of the California Wild and Scenic Rivers System and the extraordinary values for which each component was included in the system.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5093.52 of the Public Resources Code
- 2 is amended to read:
- 3 5093.52. As used in this chapter, the following terms have the
- 4 following meaning:
- 5 (a) “Secretary” means the Secretary of the Resources Agency.
- 6 (b) “Resources Agency” means the Secretary of the Resources
- 7 Agency and any constituent units of the Resources Agency that the
- 8 secretary determines to be necessary to accomplish the purposes
- 9 of this chapter.
- 10 (c) “River” means the water, bed, and shoreline of rivers,
- 11 streams, channels, lakes, bays, estuaries, marshes, wetlands, and
- 12 lagoons, up to the first line of permanently established riparian
- 13 vegetation.

(d) “Free-flowing” means existing or flowing without artificial impoundment, diversion, or other modification of the river. The presence of low dams, diversion works, and other minor structures ~~shall does not automatically bar any a river’s inclusion within the system; provided, however, that this.~~ *However, this subdivision shall does not be construed to authorize or encourage future construction of those structures on any component of the system.*

(e) “System” means the California Wild and Scenic Rivers System.

(f) “Land use regulation” means the regulation by any state or local governmental entity, agency, or official of any activities that take place other than directly on the waters of the segments of the rivers designated in Section 5093.54.

(g) “Director” means the Director of Fish and Game.

(h) “Immediate environments” means the land immediately adjacent to the segments of the rivers designated in Section 5093.54.

(i) “Special treatment areas” means, for purposes of this chapter, those areas defined as special treatment areas in Section 895.1 of Title 14 of the California ~~Administrative Code of Regulations~~, as in effect on January 1, ~~1981~~ 2004, as that definition ~~is applicable~~ *applies to wild and scenic river segments designated from time to time in Section 5093.54, and also includes areas within 200 feet of the watercourse transition line of a state-designated recreational river segment designated in Section 5093.54 that may be at risk during timber operations.*

(j) “Board” means the State Board of Forestry and Fire Protection.

SEC. 2. Section 5093.55 of the Public Resources Code is amended to read:

5093.55. Other than temporary flood storage facilities permitted pursuant to Section 5093.57, no dam, reservoir, diversion, or other water impoundment facility ~~shall~~ *may* be constructed on any river and segment thereof designated in Section 5093.54; nor ~~shall any~~ *may a* water diversion facility be constructed on the river and segment unless and until the secretary determines that the facility is needed to supply domestic water to the residents of the county or counties through which the river and segment flows, and unless and until the secretary determines that

1 the facility will not adversely affect the free-flowing condition and
2 natural character of the river and segment.

3 ~~SEC. 2.—~~

4 *SEC. 3.* Section 5093.56 of the Public Resources Code is
5 amended to read:

6 5093.56. No department or agency of the state ~~shall~~ *may* assist
7 or cooperate, whether by loan, grant, license, or otherwise, with
8 any department or agency of the federal, state, or local
9 government, in the planning or construction of a dam, reservoir,
10 diversion, or other water impoundment facility that could have an
11 adverse effect on the free-flowing condition and natural character
12 of the river and segments thereof designated in Section 5093.54 as
13 included in the system.

14 *SEC. 4.* Section 5093.61 of the Public Resources Code is
15 amended to read:

16 5093.61. All departments and agencies of the state ~~and all~~
17 ~~local governmental agencies~~ shall exercise their powers granted
18 under any other provision of law in a manner *that protects and*
19 *enhances the free-flowing state of each component of the system*
20 *and the extraordinary values for which each component was*
21 *included in the system. All local government agencies shall*
22 *exercise their powers granted under any other provision of law in*
23 *a manner consistent with the policy and provisions of this chapter.*

24 *SEC. 5.* Section 5093.68 of the Public Resources Code is
25 amended to read:

26 5093.68. (a) Within the boundaries of special treatment areas
27 adjacent to wild, scenic, and recreational river segments, all of the
28 following provisions ~~shall~~ apply, in addition to any other
29 applicable provision under this chapter or generally, whether by
30 statute or regulation:

31 (1) A timber operator, whether licensed or not, is responsible
32 for the actions of his or her employees. The registered professional
33 forester who prepares and signs a timber harvesting plan, a timber
34 management plan, or a notice of timber operations is responsible
35 for its contents, but is not ~~be~~ responsible for the implementation
36 or execution of the plan or notice unless employed for that
37 purpose.

38 (2) ~~Any~~ A registered professional forester preparing a timber
39 harvesting plan shall certify that he or she or a qualified

representative has personally inspected the plan area on the ground.

(3) ~~Any~~ A person operating within the special treatment area who willfully violates any provision of Chapter 8 (commencing with Section 4511) of Part 2 of Division 4, or any rule or regulation of the ~~State Board of Forestry and Fire Protection~~ *board* adopted pursuant thereto, that results in significant environmental damage ~~shall be~~ *is* guilty of a misdemeanor punishable by a fine of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000), or by imprisonment for not more than one year in the county jail, or both. The person ~~shall~~ *is* also ~~be~~ subject to civil damages to the state not to exceed ten thousand dollars (\$10,000) for each misdemeanor violation.

(4) The Director of Forestry and Fire Protection may require a bond or other evidence of financial responsibility from ~~any~~ *a* timber operator whose ability to pay the civil damages provided for in this section is reasonably determined to be uncertain.

(b) In order to temporarily suspend timber operations that are being conducted within special treatment areas adjacent to ~~wild and scenic rivers~~ *components of the system* designated pursuant to Section 5093.54, while judicial remedies are pursued pursuant to this section, an inspecting forest officer of the Department of Forestry and Fire Protection may issue a written timber operations stop order if, upon reasonable cause, the officer determines that a timber operation is being conducted, or is about to be conducted, in violation of Chapter 8 (commencing with Section 4511) of Part 2 of Division 4, or of rules and regulations adopted pursuant to those provisions, and that the violation or threatened violation would result in imminent and substantial damage to soil, water, or timber resources or to fish and wildlife habitat. A stop order shall apply only to those acts or omissions that are the proximate cause of the violation or that are reasonably foreseen ~~would~~ *to* be the proximate cause of a violation. The stop order shall be effective immediately and throughout the next day.

(c) A supervising forest officer may, after an onsite investigation, extend a stop order issued pursuant to subdivision (b) for up to five days, excluding Saturday and Sunday, ~~provided that if~~ *provided* the forest officer finds that the original stop order was issued upon reasonable cause. A stop order ~~shall~~ *may* not be issued or extended for the same act or omission more than one time.

1 (d) Each stop order shall identify the specific act or omission
2 that constitutes a violation or that, if foreseen, would constitute a
3 violation, the specific timber operation that is to be stopped, and
4 any corrective or mitigative actions that may be required.

5 (e) The Department of Forestry and Fire Protection may
6 terminate the stop order if the timber operator enters into a written
7 agreement with the department assuring that the timber operator
8 will resume operations in compliance with the provisions of
9 Chapter 8 (commencing with Section 4511) of Part 2 of Division
10 4, and with the rules and regulations adopted pursuant to those
11 provisions, and will correct any violation. The department may
12 require a reasonable cash deposit or bond payable to the
13 department as a condition of compliance with the agreement.

14 (f) Notice of the issuance of a stop order or an extension of a
15 stop order shall be deemed to have been made to all persons
16 working on the timber operation when a copy of the written order
17 is delivered to the person in charge of operations at the time that
18 the order is issued or, if no persons are present at that time, by
19 posting a copy of the order conspicuously on the yarder or log
20 loading equipment at a currently active landing on the timber
21 operations site. If no person is present at the site when the order is
22 issued, the issuing forest officer shall deliver a copy of the order
23 to the timber operator either in person or to the operator's address
24 of record prior to the commencement of the next working day.

25 (g) As used in this section, "forest officer" means a registered
26 professional forester employed by the Department of Forestry and
27 Fire Protection in a civil service classification of forester II or
28 higher grade.

29 (h) (1) Failure of the timber operator or an employee of the
30 timber operator, after receiving notice pursuant to this section, to
31 comply with a validly issued stop order is a violation of this section
32 and is punishable as provided in paragraph (3) of subdivision (a).
33 However, in all cases, the timber operator, and not an employee of
34 the operator or any other person, shall be charged with that
35 violation. Each day or portion thereof that the violation continues
36 shall constitute a new and separate offense.

37 (2) In determining the penalty for ~~any~~ a timber operator guilty
38 of violating a validly issued stop order, the court shall take into
39 consideration all relevant circumstances, including, but not
40 limited to, the following:

1 (A) The extent of harm to soil, water, or timber resources or to
2 fish and wildlife habitat.

3 (B) Corrective action, if any, taken by the defendant.

4 (i) Nothing in this section ~~shall prevent~~ *prevents* a timber
5 operator from seeking an alternative writ as prescribed in Chapter
6 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code
7 of Civil Procedure, or as provided by any other provision of law.

8 (j) (1) If a timber operator believes that a forest officer lacked
9 reasonable cause to issue or extend a stop order pursuant to this
10 section, the timber operator may present a claim to the ~~State Victim~~
11 ~~Compensation and Government Claims Board of Control~~ pursuant
12 to Part 3 (commencing with Section 900) of Division 3.6 of Title
13 1 of the Government Code for compensation and damages
14 resulting from the stopping of timber operations.

15 (2) If the ~~State Victim Compensation and Government Claims~~
16 ~~Board of Control~~ finds that the forest officer lacked reasonable
17 cause to issue or extend the stop order, the board shall award a sum
18 of not less than one hundred dollars (\$100), nor more than one
19 thousand dollars (\$1,000), per day for each day the order was in
20 effect.

21 *SEC. 6. No reimbursement is required by this act pursuant to*
22 *Section 6 of Article XIII B of the California Constitution because*
23 *the only costs that may be incurred by a local agency or school*
24 *district will be incurred because this act creates a new crime or*
25 *infraction, eliminates a crime or infraction, or changes the penalty*
26 *for a crime or infraction, within the meaning of Section 17556 of*
27 *the Government Code, or changes the definition of a crime within*
28 *the meaning of Section 6 of Article XIII B of the California*
29 *Constitution.*